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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1080 OF 2005

Dhondu Mahadu Nhavi @ Bade. ...Appellant.

Vs.

Jagannath Ishwari Chaurasiya & Ors. ...Respondents.

Mr. Dnyaneshwar Deshmukh for the appellant.

Mr. A.P. Vanorase for respondent Nos. 1/2 and 1/3.

CORAM : ANOOP V. MOHTA,J.

DATED : 17th July, 2007

P.C.

1. The appellants who is original plaintiff whose suit was decreed and the defendants/ respondents were restrained for making any construction over the suit property as described in the map annexed to the plaint. However, by an impugned order, the appellate court has allowed the appeal and the suit was dismissed, basically relying on the map prepared by the DILR, who has deposed in the suit Exhibit 40. Therefore, there are two maps on record, Exhibit-61 and Exhibit-40. It appears that, there are discrepancies in the map.

2. Admittedly, in such suits, the correct map with

proper description is a must. The appellate Court, therefore, as in the reversal order, dismissed the suit passed on the said order Exh. 40, which is also a material document. I am of the view that in this matter full opportunity should be given to both the parties to submit and support their case.

3. The learned counsel appearing for the parties also consented that the matter remanded back for fair decision on merits of the matter.

4. In view of this, the impugned judgment and order passed on 4th January, 2005, passed by the District Judge, Raigad, and the judgment and order in Regular Suit No. 132/1988, dated 24/09/1996 are quashed and set aside.

5. The matter is remanded back to the Trial Court, Civil Judge, Junior Division at Mangaon, to dispose of the suit expeditiously by giving full opportunity to both the parties to lead the additional evidence, if any. The parties to appear before the Court after four weeks. Both the parties to maintain the status quo of the property till 6 weeks. The trial Court is at liberty to pass appropriate order after hearing

both the parties on such application if any filed by the concerned party.

5. The Second Appeal is, therefore, allowed, accordingly. No costs.

(ANOOP V. MOHTA, J.)